IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2344 of 2007
To
FIRST APPEAL No. 2371 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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STATE OF GUJARAT & 2 - Appellant(s)
Versus
BHARATBHAI CHATURBHAI - Defendant(s)

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Appearance :

MR SUNIT SHAH, GOVERNMENT PLEADER for Appellant(s) : 1 – 3 IN FIRST APPEALS NOS.2344 TO 2357 OF 2007.

MS REETA CHANDARANA, AGP for Appellant(s) : 1 – 3 IN FIRST APPEALS NOS.2358 TO 2371 OF 2007.
RULE NOT RECD BACK for Defendant(s) : 1,
MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 03/08/2007

ORAL JUDGMENT

1. State of Gujarat through the Secretary, Narmada Water Resources, Water Supply and Kalpsar Department, Sachivalaya, Gandhinagar and others, appellants have filed this appeals against the judgment and award dated 25/3/2004 passed by the learned Joint District Judge, Bharuch, 2nd Fast Track Court, Rajpipla in Main Land Reference Case No.1987 of 1992 and other allied matters. By the impugned judgment, the learned Judge was pleased to partly allow the Land Acquisition Reference Cases and awarded Rs.800/- per ARE and also subsequent benefits under the provisions of Land Acquisition Act.

2. Ms.Reeta Chandarana, learned AGP appears for the State Government. She has stated that State Government has decided to acquire the land of village Kambodia, Taluka-Valia, District-Bharuch for the purpose of Baldeva Irrigation Project. She has further stated that there are three sets of matters. 1) Land Reference Acquisition Case Nos.1975 of 1992 to 1980 of 1992 in which the Government has issued Notification under Section 4

on 5/4/1990, 2) Land Reference Acquisition Case Nos.1981 of 1992 to 1987 of 1992 in which the Government has issued Notification under Section 4 on 22/3/1990 and 3) Land Reference Acquisition Case Nos.1997 of 1992 to 2005 of 1992 in which the Government has issued Notification under Section 4 on 26/8/1990 and in Land Reference Acquisition Case Nos.2006 of 1992 to 2011 of 1992, the Government has issued Notification under Section 4 on 5/4/1990. After going through the evidence laid by the claimants, the Special Land Acquisition Officer by his award dated 19/3/1991 awarded compensation at the rate of Rs.150/- per ARE i.e. Rs.1.50 per sq. mtr. As the claimants felt that the said compensation was inadequate, they filed Reference Cases before the learned District Judge, Bharuch claiming Rs.1,500/- per ARE i.e. Rs.15.00 per sq. mtr. The learned District Judge by his judgment and award dated 25/3/2004, has awarded compensation in all at the rate of Rs.800/- per ARE i.e. Rs.8/- per sq. mtr., including the award passed by the Special Land Acquisition Officer.

3. Appeals were placed for hearing before this Court and on 29/6/2007 this Court has admitted the appeals. Ms.Reeta Chandarana, learned AGP has stated that the learned Trial Judge has relied upon certain awards passed earlier and against that, the State Government has not filed any appeal and therefore, this matters may be placed for hearing and final disposal.

4. As the appeals are admitted, Mr.A.J.Patel, learned advocate is appearing for the defendants-claimants. In view of the same, with consent of the parties and learned advocates, these matters are taken up for final disposal.

5. Before the Trial Court, the certified copy of the judgment of Land Acquisition Reference Case No.625 of 1989 is produced at Exh.7. The claimants have Examined Mr.Bharatbhai Chaturbhai Patel at Exh.8, who is the claimant of Land Acquisition Reference Case No.1987 of 1992. The said witness had deposed that his land was acquired by the State Government and along with his land, land of other persons of the same village were also acquired by

the Government. All these lands were of same quality. He further deposed that private as well as Government Tube wells were also there in their village. He further deposed that land of his village is fully developed and there are Co.op Bank, Dispensary, Telephone Exchange, Electricity and road etc. facilities are available in their village. The claimant has also deposed that the acquired land of village Kambodia and Kotiyamau are adjoining to each other and the boundaries of the lands of both the village are adjoining to each other. He has further deposed that the land of Kotiyamau and their acquired land are similar so far as productivity, fertility and market price is concerned. The claimant has further deposed that each and every year the prices of the land increased and therefore, they are entitled to receive 10% price rise. Claimants have filed written submissions also.

6. The above witness was cross-examined by the learned advocate of the other side but nothing has come out in the cross-examination. In the cross-examination, the claimant has deposed that their land of village Kambodia were acquired by the

Government. He has produced the judgment of Land Acquisition Reference Case No.625 of 1989 (Main). He further deposed that lands of village Kambodia and Kotiyamau are of equal quality.

7. The claimants have relied upon the judgment of the Reference Court in Land Acquisition Reference Case No.625 of 1989 (Main), which is produced at Exh.7. The said judgment is in respect of lands acquired by the Government of village Kotiyamau. That either side have not produced the evidence of sale instances and in absence of such evidence the judgment of the reference court in respect of the land acquired of adjoining village is good evidence to assess the market value of the lands as discussed above. The simada(boundaries) of village Kambodia and village Kotiyamau are adjoining and very near to each other. In the above said judgment, the Reference Court has awarded compensation at the rate of Rs.900/- per ARE for the acquired lands.

8. The learned Trial Judge has relied upon the judgment of this Court in the case of Special Land Acquisition Officer vs. Motibhai Mohanbhai in First

Appeal Nos.4627 of 1996 to 4648 of 1996, decided on 6/5/1997. The learned Judge has also relied upon the judgment of the Hon'ble Supreme Court in the case of Second Additional Special Land Acquisition Officer vs. Chunilal, reported in 1999 (2) GLR 1357, where the Hon'ble Supreme Court has held that:

> “Compensation-Reference Court relied on various judgment for arriving at just, adequate and reasonable compensation-one previous judgment is in respect of the land situated in a village having common Gram Panchayat and common simada reference court has not committed any error in relying on the previous judgment pertaining to land of new by village and acquired for same purpose.”

9. After going through the above said judgments, the learned Judge has held that it is now well settled legal position that while adjudicating the claim, the award already passed in respect of land of same village or the land adjoining vicinity of the land should be considered as comparable instances and award passed by the reference court in similar

situated acquired land must be taken into consideration for assessing the market value of the land. In view of the above legal position, I accept the market value, assessing by the Reference Court in the judgment produced at Exh.7. Hence, I come to the conclusion that Rs.800/- per ARE would be just, proper and reasonable market value.

10. I have gone through the judgment and award of the Trial Court and also judgment and award preferred by the Trial Court for this case. The learned advocate for the claimants stated that in this case, the Trial Court has relied upon the previous award in Land Acquisition Reference Case No.625 of 1989, Exh.7, where the Reference Court has awarded Rs.900/- per ARE for the acquired lands. From the award relating to this case, it appears that lands of village Kotiyamau and village Kambodia are adjoining to each other and also of same vicinity. Therefore, the judgment and award of the learned Trial Judge, awarding Rs.800/- per ARE is quite just and proper.

11. Ms.Reeta Chandarana, learned AGP for the appellants has not been able to assail the order of

the learned Trial Judge in this behalf.

12.In view of the above facts and circumstances of the case, the appeals are required to be dismissed. Therefore, the appeals are dismissed.

(K.M.Mehta, J.)

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